

CITY OF MILPITAS
Summary of Contents
Milpitas City Council Meeting
February 3, 2004
4:30 p.m. Closed Session
7:00 p.m. Public Business
455 E. Calaveras Boulevard

I. ROLL CALL (4:30 p.m.)

II. ADJOURN TO CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

(Pursuant to Government Code Section 54957)

Title: City Manager

2. CONFERENCE WITH LABOR NEGOTIATOR

(Pursuant to Government Code Section 54957.6)

Unrepresented Employee: City Manager

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

(Pursuant to Government Code Section 54956.8)

Property: APN Nos. 86-12-015, 86-12-016, and 86-12-020

Negotiating Party: Milpitas Redevelopment Agency

Under Negotiation: Terms and Conditions for Acquisition of Property

III. CLOSED SESSION ANNOUNCEMENTS: Report on action taken in Closed Session, if required pursuant to Government Code Section 54957.1, including the vote on abstention of each member present

IV. PLEDGE OF ALLEGIANCE (7:00 p.m.)

V. APPROVAL OF MINUTES: January 20, 2004

VI. SCHEDULE OF MEETINGS

VII. PRESENTATIONS

Letter of Congratulations to the City of Milpitas – 50th Anniversary:

Mayor to read letter of congratulations to the City of Milpitas from Governor Arnold Schwarzenegger

Proclamation:

- Cliff Williams, in appreciation for contributions to the community

VIII. CITIZENS FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to under two minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

IX. ANNOUNCEMENTS

X. APPROVAL OF AGENDA

- XI. CONSENT CALENDAR (Items with Asterisks)**
- XII. PUBLIC HEARINGS (None)**
- XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING**
- RA1. CALL TO ORDER BY THE MAYOR**
- RA2. ROLL CALL**
- RA3. APPROVAL OF MINUTES: January 20, 2004**
- RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)**
- RA5. Progress Report: Milpitas Public Library (Project No. 3394) (Staff Contact: Greg Armendariz 586-3220)**
- *RA6. Approve Authorization to Enter into Negotiations with Shapell Industries of Northern California, LLC for Affordable Housing Units (Staff Contact: Felix Reliford, 586-3071)**
- *RA7. City of Milpitas Investment Portfolio Status Report for the Quarter Ended December 31, 2003 (Staff Contact: Emma Karlen, 586-3145)**
- *RA8. Approve Budget Transfer to Add \$250,000 to the City Attorney's Department Budget for Fiscal Year 2003-2004 for Public Works Litigation Expenses with Funding of \$200,000 from the Redevelopment Agency Undesignated Reserve and \$50,000 from the Non-Departmental Contingent Reserve Fund, and Approve Two Purchase Orders to Meyers Nave for Public Works/Claims Related Litigation (Staff Contact: Steve Mattas, 586-3040)**
- RA9. AGENCY ADJOURNMENT**
- XIV. REPORTS OF OFFICERS AND BOARDS**
- City Council**
- 1. Adopt Resolution Supporting a Statewide Ballot Initiative Entitled *Local Taxpayers and Public Safety Protection* to Require Voter Approval Before the State Government May Take Local Tax Funds: Mayor Esteves**
- *2. Approve the Mayor's Appointments and Reappointment to the Community Advisory Commission and Sister Cities Commission: Mayor Esteves**
- 3. Discuss a Permanent Dedication to Honor Dr. Martin Luther King, Jr.: Councilmember Livengood**
- Parks, Recreation and Cultural Resources Commission**
- *4. Approve the Proposed Changes to the Family Child Care Assistance Fund Policies and Procedures (Staff Contact: Toby Librande, 586-3203)**
- XV. UNFINISHED BUSINESS (None)**
- XVI. NEW BUSINESS**

- *5. Accept Grant of Equipment from Tropos Networks, Inc. (Staff Contact: Bill Marion, 586-2701)**
- *6. Approve Request to the Santa Clara County Partnership for School Readiness (Staff Contact: Toby Librande, 586-3203)**
- *7. Approve Marquee Request: Annell Spencer (Staff Contact: Jennifer Tagalog, 586-3206)**

XVII. ORDINANCES (None)

XVIII. RESOLUTIONS

- *8. Adopt Resolution Summarily Vacating a Portion of Unnecessary Landscape and Sidewalk Easement Along the West Side of N. McCarthy Boulevard (Project No. 3030) (Staff Contact: Mehdi Khaila, 586-3328)**

XIX. BIDS AND CONTRACTS

- *9. Approve Budget Appropriation and Award Construction Contract: Berryessa Creek Trail, Reach 3 (Project No. 5074) (Staff Contact: Greg Armendariz, 586-3220)**
- *10. Approve Permittee Dedication and Improvement Agreement with Edsel Court Apartments (Project No. 2295) (Staff Contact: Mehdi Khaila, 586-3328)**

XX. CLAIMS AND DEMANDS

- *11. Approve Payment Requests: Miscellaneous Vendors / Contractors (Staff Contact: Lou Zenzen, 586-3161)**

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 17, 2004, AT 7:00 P.M.**

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Milpitas City Council Meeting
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XII. PUBLIC HEARINGS (None)

XIII. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER BY THE MAYOR

RA2. ROLL CALL

RA3. APPROVAL OF MINUTES: January 20, 2004

RA4. APPROVAL OF AGENDA AND CONSENT CALENDAR (ITEMS WITH ASTERISKS)

RA5. PROGRESS REPORT: MILPITAS PUBLIC LIBRARY (PROJECT NO. 3394) (STAFF CONTACT: GREG ARMENDARIZ 586-3220)

BACKGROUND: The Library Subcommittee and staff are continuing to work on the Building Program for the Library. Staff will provide a brief presentation on the progress of the project.

RECOMMENDATION: Note receipt and file.

***RA6. APPROVE AUTHORIZATION TO ENTER INTO NEGOTIATIONS WITH SHAPELL INDUSTRIES OF NORTHERN CALIFORNIA, LLC FOR AFFORDABLE HOUSING UNITS (STAFF CONTACT: FELIX RELIFORD, 586-3071)**

BACKGROUND: Shapell Industries of Northern California, Milpitas, California is proposing to develop a residential project in the Town Center with approximately 65 residential units, and is interested in providing affordable housing with financial assistance from the Agency. The final details of the agreement will be presented to the City Council for approval at a later date. It is recommended that the Agency authorize staff to enter into negotiations with Shapell Industries of Northern California for the purpose of providing financial assistance from the Agency's 20% Affordable Housing Set-Aside funds. The Agency's authorization to enter into negotiations should not be considered implied approval for any of the forms of assistance requested by the developer. Any agreement negotiated is subject to the Agency/Council review and approval.

RECOMMENDATION: Approve authorization to enter into negotiations with Shapell Industries of Northern California to provide Agency Finance Assistance from its 20% Affordable Housing Set-Aside funds.

***RA7. CITY OF MILPITAS INVESTMENT PORTFOLIO STATUS REPORT FOR THE QUARTER ENDED DECEMBER 31, 2003 (STAFF CONTACT: EMMA KARLEN, 586-3145)**

BACKGROUND: In compliance with the State of California Government Code and the City's Investment policy, the City of Milpitas Investment Report for the quarter ended December 31, 2003, is submitted for your review and acceptance.

The Portfolio Summary Report included in the Council's agenda packet provides a summary of the City's investments by type. It lists the par value, market value, book value, percentage of portfolio, term, days to maturity, and the equivalent yields for each type of investment. The Portfolio Details Report provides the same information for each individual investment in the City's portfolio as of December 31, 2003.

On November 20, 2003, the Milpitas Redevelopment Agency (Agency) issued \$200 million Tax Allocation Bonds to provide funding for capital improvement projects and to refund the 1997 and 2000 Tax Allocation Bonds. Through competitive bidding, the Agency invested the net bond proceeds in a fixed rate Repurchase Agreement with Citigroup Global Markets, Inc. The City's investment portfolio as of December 31, 2003, includes the current balance of the bond proceeds investment of \$113,849,835.10.

As of December 31, 2003, the principal cost and market value of the City's investment portfolio was \$282,186,902.84 and \$284,116,640.19 respectively. When market interest rates increase after an investment is purchased, the market value of that investment decreases. Conversely, when market interest rates decline after an investment is purchased, the market value of that investment increases. If the investments are not sold prior to the maturity date, there is no market risk. Therefore, in accordance with the City's investment policy, all investments are held until maturity to ensure the return of all invested principal.

The City's effective rate of return for the period ended December 31, 2003, was 2.88%. The comparative benchmarks for the same period were 1.30% for LAIF (Local Agency Investment Fund) and 1.73% for the average 2 year Treasury Note. Excluding the long-term GNMA securities and Repurchase Investment Agreement, the weighted average maturity of the portfolio was 631 days.

The investment portfolio is in compliance with the City's investment policy. A combination of securities maturing, new revenues, and tax receipts will adequately cover the anticipated cash flow needs for the next six months. Cash flow requirements are continually monitored and are considered paramount in the selection of maturity dates of securities.

RECOMMENDATION: Note receipt, and file the investment report for the quarter ended December 31, 2003.

- *RA8. APPROVE BUDGET TRANSFER TO ADD \$250,000 TO THE CITY ATTORNEY'S DEPARTMENT BUDGET FOR FISCAL YEAR 2003-2004 FOR PUBLIC WORKS LITIGATION EXPENSES WITH FUNDING OF \$200,000 FROM THE REDEVELOPMENT AGENCY UNDESIGNATED RESERVE AND \$50,000 FROM THE NON-DEPARTMENTAL CONTINGENT RESERVE FUND, AND APPROVE TWO PURCHASE ORDERS TO MEYERS NAVE FOR PUBLIC WORKS/CLAIMS RELATED LITIGATION (STAFF CONTACT: STEVE MATTAS, 586-3040)**

BACKGROUND: This request is to approve a budget adjustment to allocate \$250,000 to the City Attorney's department for public works/claims litigation. These funds would be used for expert witness costs and attorneys fees incurred as part of the City Hall litigation, the litigation related to the main fire station and for legal expenses associated with an existing claim related to the recycled water pipeline contract. Of the total amount requested, \$200,000 should be appropriated from RDA undesignated reserve funds and \$50,000 should be appropriated from non-departmental contingent reserved fund.

RECOMMENDATION: Approve a budget transfer to add \$250,000 to the City Attorney's Department budget for Fiscal Year 2003-2004 for public works/claims litigation expenses with funding of \$200,000 from the Redevelopment Agency undesignated reserve and \$50,000 from the non-departmental contingent reserve fund, and approve two purchase orders to Meyers Nave in the amounts of \$200,000 and \$50,000 for public works related litigation.

RA9. AGENCY ADJOURNMENT

XIV. REPORTS OF OFFICERS AND BOARDS

City Council

1. **ADOPT RESOLUTION SUPPORTING A STATEWIDE BALLOT INITIATIVE ENTITLED *LOCAL TAXPAYERS AND PUBLIC SAFETY PROTECTION* TO REQUIRE VOTER APPROVAL BEFORE THE STATE GOVERNMENT MAY TAKE LOCAL TAX FUNDS: MAYOR ESTEVES**

BACKGROUND: The League of California Cities has joined forces with the California State Association of Counties (CSAC) and the California Special Districts Association (CSDA) to sponsor a ballot initiative in November 2004, entitled the *Local Taxpayers and Public Safety Protection Act*, to put the voters in charge of whether local tax dollars should be used to fund state services. It will not raise taxes, repeal laws the state has already passed, require the return of property taxes already taken, nor affect funding of schools, and it will not prevent structural reform of the fiscal system – it will simply require that structural changes be planned collaboratively by state and local leaders and approved by the voters.

The initiative will do two simple things:

- Public Vote Required: Require approval by a majority of the electorate before a proposed state law may take effect that reduces the sales, property, and VLF funds of cities, counties, and special district. Flexibility is provided to reduce the VLF and replace it with substitute revenues (i.e., a “backfill”) without voter approval; **and**
- Reimburse for Mandated Costs: Clarify the state’s duty to reimburse in a timely way for a new mandated program or higher level of service, protecting local governments from hidden cost shifts. Allows local governments to opt-out of certain non-workplace safety and employee procedural rights mandates if the state fails to pay in a timely way.

Mayor Esteves is asking the Council to adopt a resolution supporting the ballot initiative. A draft resolution is included in the Council’s agenda packet

RECOMMENDATION: Adopt Resolution supporting a Statewide Ballot Initiative entitled the *Local Taxpayers and Public Safety Protection Act* to require voter approval before the State Government may take local tax funds, and direct the City Clerk to send a copy to the League of California Cities.

*2. **APPROVE THE MAYOR'S APPOINTMENTS AND REAPPOINTMENT TO THE COMMUNITY ADVISORY COMMISSION AND SISTER CITIES COMMISSION: MAYOR ESTEVES**

BACKGROUND: Mayor Esteves is recommending the following appointments and reappointment:

Community Advisory Commission

Reappoint Sudhir Mandal to a new four-year term expiring January 2008;
Appoint Craig Ranker (from Alternate 1) to a regular position for a term expiring January 2008 (resignation of Al Garcia);
Appoint Chris Lee (from Alternate 2) to a regular position for a term expiring January 2008 (Guadalupe Ortiz, Jr. term expiration);

Appoint Nestor Luna (from Alternate 3) to a regular position for a term expiring January 2006 (Sam Robinson resignation);
Move Jenifer Lind from Alternate 4 to Alternate 1 (term expiring January 2005);
Appoint Danny Fang to Alternate 2 (term expiring January 2006); and
Appoint Michael Queenan to Alternate 3 (term expiring January 2006).

Sister Cities Commission

Appoint Linda Downey (from Alternate 1) to a regular position for a term expiring September 2004 (resignation of Jenifer Lind)
Move Roselda Mateo from Alternate 2 to Alternate 1 (term expiring September 2004);
and
Appoint Massoud Arefi to Alternate 2 (term expiring September 2005).

Included in the Council's agenda packet are copies of current applications for these commissions.

RECOMMENDATION: Approve the Mayor's appointments and reappointment.

3. DISCUSS A PERMANENT DEDICATION TO HONOR DR. MARTIN LUTHER KING, JR.: COUNCILMEMBER LIVENGOD

BACKGROUND: At the January 20, 2004, City Council meeting, Councilmember Livengood requested an item on a future Council agenda to discuss naming a City facility or City street in honor of Dr. Martin Luther King, Jr. This item has been placed on the agenda to provide an opportunity for the Council to discuss various possibilities for an appropriate permanent dedication to recognize Dr. King and to provide direction to staff.

RECOMMENDATION: Discuss options and direct staff accordingly.

Parks, Recreation and Cultural Resources Commission

***4. APPROVE THE PROPOSED CHANGES TO THE FAMILY CHILD CARE ASSISTANCE FUND POLICIES AND PROCEDURES (STAFF CONTACT: TOBY LIBRANDE, 586-3203)**

BACKGROUND: The purpose of the Milpitas Family Child Care Assistance Fund is to increase program quality in Milpitas Family Child Care Homes. Since its inception in 1996, the only policy changes to the program have been monetary in nature. The fiscal year budget has grown from the pilot program funding level of \$2,500 to the current 2003/2004 fiscal year funding level of \$4,000, and the individual grant limit amount has increased from \$250 to \$500 per applicant per year.

Current trends and feedback received from grantees (regarding both the content of the policies as well as the steps in the process), prompted staff to begin a policies and procedures review of the Family Child Care Assistance Fund. Staff identified four desired outcomes to updating the Family Child Care Assistance Fund policies and procedures:

1. To align the funding priorities with current county, state, and federal priorities;
2. To clarify the language of the document to be more reader-friendly;
3. To reorganize the details of the eligibility requirements, funding priorities, fiscal limits and application process, and
4. To address possible provider licensing issues and outline the procedure for funds recovery.

Staff utilized the above desired outcomes to guide the Family Child Care Assistance Fund program update. Overall changes to the program include restructuring the format of the document, streamlining the eligibility requirements, and detailing funding priorities. Included in the Council's agenda packet are the itemized changes to the program detailed in a memorandum

dated January 21, 2004, subject: Changes to the Family Child Care Assistance Fund Policies and Procedures.

Following the initial draft of the new policies and procedures, staff forwarded the proposed changes to the City Attorney for a comprehensive review. The City Attorney reviewed all of the changes. In his response, the City Attorney indicated that the proposed changes complement state law. In addition, the City Attorney suggested specific language regarding funds recovery be included. Staff incorporated this language into the Fiscal Limits and Conditions, Items 3 and 4.

At its December 8, 2003, meeting, the Parks, Recreation and Cultural Resources Commission (PRCRC) reviewed the proposed changes. The Commissioners discussed the draft proposal and voted to table the discussion until the January 5, 2004, meeting. At the January meeting, the Commission approved for City Council to review the draft policy document with staff's proposed changes and the addition of one new eligibility requirement. The PRCRC recommended that individuals shall be eligible for funding for a maximum of three consecutive years, effective fiscal year 2004/2005. Providers caring for special needs children shall be exempt from this requirement.

Included in the Council's agenda packet are five items for review: 1) memorandum dated January 21, 2004, detailing specific program changes, 2) current program policies, 3) draft program policies, 4) comprehensive grantee funding list, and 5) email grant program review from Mr. Peter Spoerl, City Attorney.

RECOMMENDATION: Approve the proposed changes to the Family Child Care Assistance Fund policies and procedures to be effective July 1, 2004.

XV. UNFINISHED BUSINESS (None)

XVI. NEW BUSINESS

***5. ACCEPT GRANT OF EQUIPMENT FROM TROPOS NETWORKS, INC. (STAFF CONTACT: BILL MARION, 586-2701)**

BACKGROUND: Tropos Networks, Inc. has offered the City a grant of equipment and services as part of a demonstration program for wireless technology in Public Safety. Of its existing clients, Tropos selected the City of Milpitas and the City of North Miami Beach, Florida to receive grants of equipment. Milpitas was selected due to the advanced technology presently installed in Police vehicles and the City's demonstrated ability to implement new technology. Currently, the City has implemented a wireless network of approximately 2 square miles and further expansion was planned as part of the overall Public Safety project. Acceptance of this grant will allow the City to greatly expand the coverage of high-speed wireless network at a reduced cost. In return for acceptance of this grant, the City agrees to be the subject of a case study and act as a reference for other agencies interested in wireless technology. The equipment, software, and services provided by Tropos is valued at \$85, 642.

RECOMMENDATION: Authorize the City Manager to execute an agreement with the Tropos Networks, Inc. for a grant of networking equipment, subject to approval as to form by the City Attorney.

***6. APPROVE REQUEST TO THE SANTA CLARA COUNTY PARTNERSHIP FOR SCHOOL READINESS (STAFF CONTACT: TOBY LIBRADE, 586-3203)**

BACKGROUND: Staff received a letter dated November 7, 2003, from The Santa Clara County Partnership for School Readiness requesting that the City of Milpitas consider contributing \$1,000 to support the Santa Clara County Kindergarten School Readiness Assessment Project.

The Santa Clara County Partnership for School Readiness advances school readiness and success for all children through age eight in the County. This group of regional partners meets monthly under the leadership of Success by Six of United Way and the Health Trust. The David and Lucile Packard Foundation has provided funding support and First 5 Santa Clara County serves as the fiscal agent. To date, the Partnership has overseen a mapping project, defined School Readiness, and is currently preparing to conduct a Santa Clara County School Readiness Assessment Project in the Fall of 2004. This Assessment Project is designed to provide a reliable, reusable benchmark of school readiness in Santa Clara County, and to build ownership for the data with the coalition of Santa Clara County funders. The estimated cost for the assessment is \$131,326.00.

Included in the Council's agenda packet is a memorandum further introducing the Santa Clara County Partnership for School Readiness, outlining the details of the School Readiness Assessment Project, and requesting a \$1,000.00 contribution. By contributing to the Assessment Project, the City of Milpitas will receive access to the data in the reports, an opportunity to compare the City of Milpitas' schools with like Academic Performance Index (API) scored sample schools and continued dialogue regarding best practices for preparing children for school.

RECOMMENDATION: Approve request of \$1000.00 from the Council's Community Promotions Budget to fund the Santa Clara County Partnership for School Readiness to contribute to the Santa Clara County School Readiness Assessment.

***7. APPROVE MARQUEE REQUEST: ANNELL SPENCER (STAFF CONTACT: JENNIFER TAGALOG, 586-3206)**

BACKGROUND: Annell Spencer, who has the Publicity Slot on the Board of Friends of Library, has requested to use the City of Milpitas marquee as follows:

Marquee Request (to be displayed 2/4 - 2/14)
Milpitas Library
Book Sale
Romance & Computer
Feb 14th 10am-4pm

Pursuant to Resolution No. 6310, Facility Use Rules and Regulations, the City Council must approve all exceptions to the marquee policy.

RECOMMENDATION: Approve Annell Spencer's request to use marquee (February 4th - 14th).

XVII. ORDINANCES (None)

XVIII. RESOLUTION

***8. ADOPT RESOLUTION SUMMARILY VACATING A PORTION OF UNNECESSARY LANDSCAPE AND SIDEWALK EASEMENT ALONG THE WEST SIDE OF N. MCCARTHY BOULEVARD (PROJECT NO. 3030) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: A 34-foot wide strip of land along the west side of N. McCarthy Boulevard was dedicated to the City for landscape and sidewalk purposes as part of the McCarthy Ranch development. On March 7, 2000, the City Council approved the zone change from Mixed Use to Industrial Park and adopted new Design and Development Guidelines for McCarthy Ranch. The new guidelines reduced the landscape easement width in this area to 27 feet. Therefore, 7 of the dedicated 34 feet landscape easement is no longer necessary and can be summarily vacated in accordance with the State Street and Highway Code. Utility companies were notified and no objection was received to the proposed vacation.

RECOMMENDATION: Adopt resolution summarily vacating 7 feet of landscape and sidewalk easement along a portion of N. McCarthy Boulevard.

XIX. BIDS AND CONTRACTS

***9. APPROVE BUDGET APPROPRIATION AND AWARD CONSTRUCTION CONTRACT: BERRYESSA CREEK TRAIL, REACH 3 (PROJECT NO. 5074) (STAFF CONTACT: GREG ARMENDARIZ, 586-3220)**

BACKGROUND: This project provides for trail improvements including installation of access points on the Berryessa Creek levee, from Hillview Dr. to Jacklin Road/Abel St. The project will also install a pedestrian bridge over the creek, near the vicinity of Gill Park, to provide access to the town center area. In addition, the Santa Clara Valley Water District will be implementing additional flood control improvements at some point in the future. These trail improvements have been coordinated and designed to accommodate those future flood control improvements.

This project has received a federal grant of \$375,000 and more recently, Santa Clara Valley Water District has granted the City another \$90,000 grant for the construction costs of the pedestrian bridge. The federal grant is included in the approved Capital Improvement Project. The second grant from the Santa Clara Valley Water District was granted after the CIP approval process last year, and therefore was not included in the approved project budget. Staff is recommending approval of a budget appropriation of \$90,000 from the Park Fund to cover the reimbursement grant.

On December 16, 2003, the City Council approved plans and specifications for Berryessa Creek Trail, Reach 3 and authorized advertising for bids. The project was advertised and sealed proposals were opened on January 28, 2004. A total of nine bids were received, ranging from \$534,700 to \$896,265. The Engineer's estimate was \$585,000. The apparent low bid was received from Bugler Construction. A copy of the bid results is included in the Council's agenda packet.

The Federal grant for the project requires a portion of the work to be provided by a "Disadvantaged Business Enterprise" (DBE) firm. Bidders are to provide special certifications and meet specific requirements, including information on the DBE requirements. The low bidders' DBE submittals are due on February 3, 2004, as allowed by the Contract. Staff will review the DBE submittals to determine conformance with federal and contract requirements.

The City needs to award this contract by February 20, 2004, to meet the Federal grant deadline. Because staff will not be able to determine prior to the Council meeting whether the low bidder has met its DBE obligations, staff recommends that the City Council award the construction contract to the lowest responsive bidder conditioned upon staff determining the bidder has met the DBE requirements. Staff further recommends that if the lowest bidder has not met the DBE requirements, the Council authorize award of the contract to the next lowest responsive bidder who has met the DBE requirements, with the condition that the bidder's bid is below the project budget. Sufficient funds are available in the project budget.

RECOMMENDATION:

1. Approve a budget appropriation of \$90,000 from the Park Fund.
2. Award construction contract for Berryessa Creek Trail, Reach 3 (Project No. 5074) to Bugler Construction, conditioned upon Staff confirming that Bugler Construction has met the federally-mandated DBE requirements. If Bugler Construction has not met the DBE requirements, the construction contract shall be awarded to the next lowest responsive bidder who has met the DBE requirements, and whose bid is below the project budget.

***10. APPROVE PERMITTEE DEDICATION AND IMPROVEMENT AGREEMENT WITH EDESEL COURT APARTMENTS (PROJECT NO. 2295) (STAFF CONTACT: MEHDI KHAILA, 586-3328)**

BACKGROUND: On December 17, 2002, the City Council approved the construction of 6 new apartment units in conjunction with the renovation of 4 existing apartment buildings at 1129 and 1143 Edsel Drive and 1116 and 1124 Shirley Drive.

Edsel Court Apartments (Permittee) is required to execute a secured public improvement agreement with the City to dedicate necessary public service utility easement and construct all necessary public improvements within Edsel Drive, Shirley Drive, and the proposed public service utility easement.

RECOMMENDATION: Approve the Permittee Dedication and Improvement Agreement and authorize the City Manager to execute the same, subject to the approval as to form by the City Attorney.

XX. CLAIMS AND DEMANDS

***11. APPROVE PAYMENT REQUESTS: MISCELLANEOUS VENDORS / CONTRACTORS (STAFF CONTACT: LOU ZENZEN, 586-3161)**

BACKGROUND: In accordance with direction given by City Council at its August 15, 1995, meeting, Purchasing has prepared the following list of purchasing requests over \$5,000.00 for approval:

1. \$5,538.65 to Stewart & Stevenson for emergency transmission repair and motor mount replacements on Fire Engine No. 3 for the Fleet Maintenance Division. (Funds are available from the Public Works Department operating budget for these services.)
2. \$17,244.80 to Target Specialty Products for the purchase of systemic insecticides to provide annual control of aphids on Modesto Ash and other susceptible street trees for the Tree and Landscape Maintenance Division. (Funds are available from the Public Works Department operating budget for this purchase.)
3. \$11,625.04 to National Energy Foundation for the purchase of water efficiency educational program material kits for teaching 5th grade students at five schools the water wise program for the Utility Engineering Division. (Funds are available from the Engineering Department operating budget for this purchase.)
4. \$5,000.00 to Alliance Occupational Medicine, Inc. to provide new hire medical exams and tests, vaccines, and minor medical needs of existing staff. (Funds are available from the Human Resources Department operating budget for these services.)
5. \$5,071.62 to Milpitas Printing for the printing of two sided, four color door hangers outlining the odor complaint process per the City's Odor Outreach Plan for the Utility Engineering Division. (Funds are available from the Engineering Department operating budget for this purchase.)

RECOMMENDATION: Approve the purchase requests.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, FEBRUARY 17, 2004, AT 7:00 P.M.**